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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

KENNETH BROOKS,

Defendant and Appellant.

B215727

(Los Angeles County
Super. Ct. No. PA063115)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Ronald S. Cohen, Judge. Appeal dismissed.

Marcia R. Clark, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

Kenneth Brooks was arrested after he sold rock cocaine to an undercover police officer. On December 11, 2008, Brooks was charged by information with one count of offering to sell cocaine base (Health & Saf. Code, § 11352, subd. (a)). The information further alleged Brooks had suffered four prior serious or violent felony convictions within the meaning of the “Three Strikes” law (Pen. Code, §§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)) and had served four separate prison terms for felonies within the meaning of Penal Code section 667.5, subdivision (b).

Brooks agreed to enter a negotiated plea of no contest to offering to sell cocaine base and to admit one prior strike allegation. In return, the remaining special allegations were to be dismissed, and Brooks would be sentenced to an aggregate state prison term of six years.

The record of the February 19, 2009 plea hearing establishes Brooks was advised of and waived his constitutional rights and was advised of, and acknowledged he understood, the consequences of his plea. Specifically, Brooks stated he understood he was to receive a state prison sentence of six years as a result of his plea. Brooks stated he understood the consequences of his plea and believed it was in his best interests to accept the plea agreement. He stipulated to a factual basis based on the police reports and preliminary hearing transcript. The trial court found the plea was freely and voluntarily entered and there was a factual basis for the plea.

In accordance with the plea agreement, Brooks was sentenced to a prison term of six years, consisting of the lower term of three years for offering to sell cocaine base, doubled under the Three Strikes law. The court ordered Brooks to pay a \$20 security fee, a \$50 lab fee, and a \$200 restitution fine. A parole revocation fine was imposed and suspended pursuant to Penal Code section 1202.45. The remaining special allegations were dismissed. Brooks was awarded 157 days of presentence credit (105 actual days and 52 days of conduct credit).

Brooks filed a timely notice of appeal in which he checked the preprinted boxes indicating, “This appeal is based on the sentence or other matters that occurred after the plea”; and “This appeal challenges the validity of the plea or admission.” As grounds for

seeking a certificate of probable cause, Brooks claimed his defense counsel was constitutionally ineffective by not representing Brooks “to his full ability” at the preliminary hearing. Brooks maintains that after the court denied his *Marsden* motion (*People v. Marsden* (1970) 2 Cal.3d 118), he “felt [he] was forced to take the deal in plea [sic] no contest.” Brooks’s request for a certificate of probable cause was denied. We appointed counsel to represent Brooks on appeal.

After examination of the record counsel filed an opening brief in which no issues were raised. On August 31, 2009, we advised Brooks he had 30 days within which to personally submit any contentions or issues he wished us to consider. No response has been received to date.

We have examined the entire record and are satisfied Brooks’s attorney has fully complied with the responsibilities of counsel and no arguable issues exist. (*Smith v. Robbins* (2000) 528 U.S. 259, 277-284 [120 S.Ct. 746, 145 L.Ed.2d 756]; *People v. Kelly* (2006) 40 Cal.4th 106, 112-113; *People v. Wende* (1979) 25 Cal.3d 436, 441.)

A criminal defendant who appeals following a plea of no contest or guilty without a certificate of probable cause can only challenge the denial of a motion to suppress evidence or raise grounds arising after the entry of the plea that do not affect its validity. (Cal. Rules of Court, rule 8.304(b).) In his request for a certificate of probable cause, Brooks challenges the validity of his plea or admission, as well as the validity of his sentence imposed as part of his plea. Notwithstanding the fact Brooks’s claim of ineffective assistance is without support in the record, because Brooks is, in substance, attacking the validity of his plea, his notice of appeal is inoperative; and the appeal must be dismissed. (Pen. Code, § 1237.5; see *People v. Shelton* (2006) 37 Cal.4th 759, 769-771; *People v. Panizzon* (1996) 13 Cal.4th 68, 79.)

The appeal is dismissed.

ZELON, J.

We concur:

WOODS, Acting P. J.

JACKSON, J.